IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CIVIL APPLICATION NO. 142 OF 2007

IN

REVIEW APPLICATION NO. 10504 OF 1998

IN

CONTEMPT PETITION NO.22 of 1997

Shri Dhanpal Annappa Walwekar .. Petitioner

versus

Antar Bharti Shikshan Mandal

and others .. Respondents

...

Mr.Dilip Bodake for the petitioner.

CORAM : S.B. MHASE &

D.G. KARNIK, JJ

DATED : 24Tth September 2007.

P.C:-

1. Heard learned counsel for the applicant. This application is made for condonation of a delay in filing

petition for review of the order dated 15th January 1998 passed by a Division Bench of this Court in Contempt Petition no.22 of 1999.

2. The order of which the review is sought was passed on 15th January 1998. Application for condonation of delay is made on 27th July 2007. i.e. after lapse of more than 9 years. There is a gross delay which is not sufficiently explained and therefore the application deserved to be rejected.

3. Learned counsel for the applicant submitted that review application was filed in the year 1998 itself though it was barred by limitation. Only application for condonation of delay was not filed for 10 years and therefore, the delay that is required to be explained is only the delay for filing of a Review Application and not delay in filing of an application for condonation of delay.

4. Order 47 Rule 3 of the Code of Civil Procedure lays down that the provisions of form of preferring an appeal shall apply mutatis mutandis, to applications for review. Therefore, the provisions contained in Order 41 relating to the form of appeal shall also be applicable

to an application for review. Rule 3A of Order 41 lays down that whenever the appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within the period of limitation. In other words, when the appeal is delayed, appeal memo is required to be accompanied by an application for condonation of delay supported by an affidavit. The appeal memo would not ordinarily be deemed to be properly filed unless it is accompanied by an application for condonation of delay supported by an affidavit, where the appeal is not filed within the period of limitation prescribed. It was therefore obligatory on the applicant to file an application for condonation of delay supported by an affidavit setting forth the cause/explanation fo the delay along with the review petition. This was not done. Therefore, the Review Petition was not properly filed and was incompetent. At the most, we can say the Review Petition is deemed to have been filed on the date on which the applicant filed the application for condonation of delay. Thus, in our view, the delay is to be counted upto the date of filing of delay

condonation application. That delay is of 9 years which has not been explained at all.

5. In the circumstances, there is no merit in the application which is hereby rejected.

(D.G.KARNIK, J) (S.B.MHASE, J)